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Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,	)	No. P1300CR20081339
	)	
Plaintiff,	)	Div. 6
	)	
vs.	)	<b>DEFENDANT'S PROPOSED</b>
	)	<b>PRELIMINARY JURY</b>
STEVEN CARROLL DEMOCKER,	)	<b>INSTRUCTIONS</b>
	)	
Defendant.	)	
	)	
	)	
	)	

Mr. DeMocker, by and through counsel, hereby submits proposed preliminary jury instructions pursuant to this Court's order. These instructions are based on the Revised Arizona Jury Instructions ("RAJI") (criminal (3<sup>rd</sup> edition) and the Ninth Circuit Criminal Jury Instructions, as amended by counsel where noted below.

1  
2 RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of April, 2010.

3  
4 By: Larry A Hammond  
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14  
15 **ORIGINAL** of the foregoing sent  
16 via Federal Express for filing this 29<sup>th</sup>  
17 day of April, 2010 to:

18 Jeanne Hicks  
19 Clerk of the Court  
20 Yavapai County Courthouse  
21 120 S. Cortez  
22 Prescott, AZ 86303

23  
24 **COPY** of the foregoing shipped via Federal  
25 Express, overnight delivery, and email this 29<sup>th</sup>  
26 day of April, 2010 to:

Joseph Butner, Esq.  
Office of the Yavapai County Attorney  
2830 North Commonwealth Drive, #106  
Camp Verde, AZ 86322

27  
28 Dana T. O'Leary  
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1                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Importance of Jury Service**

3                   Jury service is an important part of our system of justice, with a long and  
4 distinguished tradition in American law. From the beginning, American law has  
5 viewed the jury system as an effective means of drawing on the collective wisdom,  
6 experience, and fact-finding abilities of persons such as yourselves. While it may be  
7 an occasional inconvenience, or worse, jury service is an important responsibility for  
8 you, one, which I am sure, you will take seriously.

9                   RAJI 1, 3rd Edition

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Duty of Jurors**

3   Ladies and Gentlemen:

4               Now that you have been sworn, I will briefly tell you something about your  
5   duties as jurors and give you some instructions. At the end of the trial I will give you  
6   more detailed instructions, and those instructions will control your deliberations.

7               It will be your duty to decide the facts. You must decide the facts only from the  
8   evidence produced in court. You must not speculate or guess about any fact. You  
9   must not be influenced by sympathy or prejudice.

10              You will hear the evidence, decide the facts, and then apply the law I will give  
11   to you to those facts. That is how you will reach your verdict. In doing so you must  
12   follow that law whether you agree with it or not.

13              You must not take anything I may say or do during the trial as indicating any  
14   opinion about the facts. You, and you alone, are the judges of the facts.

15                               RAJI 2, 3rd Edition

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Evidence**

3                    You will decide what the facts are from the evidence presented here in court.  
4                    That evidence will consist of testimony of witnesses, any documents and other things  
5                    received into evidence as exhibits, and any evidence stipulated to by the parties or that  
6                    you are instructed to consider.

7                    You may hear reference to exhibits that are not admitted and are not asked to  
8                    be admitted. These exhibits are not admitted as evidence, but the information from  
9                    them that is testified to by witnesses is evidence that you may consider.

10                  You will decide the credibility of the witnesses and weight to be given to any  
11                  evidence presented in the case, whether it is direct evidence or circumstantial  
12                  evidence.

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26                   RAJI 3, 3rd Edition

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Direct and Circumstantial Evidence**

3                   Evidence may be direct or circumstantial. Direct evidence is a physical exhibit  
4                   or the testimony of a witness who saw, heard, touched, smelled or otherwise actually  
5                   perceived an event. Circumstantial evidence is the proof of a fact or facts from which  
6                   the existence of another fact may be determined. The law makes no distinction  
7                   between direct and circumstantial evidence. You must determine the weight to be  
8                   given to all the evidence without regard to whether it is direct or circumstantial.

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26                   RAJI 4, 3rd Edition

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1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Evidence, Statements of Lawyers and Rulings**

3                   As I mentioned earlier, it is your job to decide from the evidence what the facts  
4 are. Here are six rules on what is and what is not evidence:

5       1.       Evidence to be considered: You must determine the facts only from the  
6 testimony of witnesses and from exhibits admitted in evidence. Anything you may see  
7 or hear when the court is not in session, even if what you see or hear is done or said  
8 by one of the parties or by one of the witnesses, is not evidence and must not be  
9 considered by you. If you should hear or see anything pertaining to the case outside  
10 the courtroom or if anyone should attempt to speak to you about this case outside the  
11 courtroom, please report to me as soon as you can.

12       2.       Lawyers' statements: Statements or arguments made by the lawyers in the case  
13 are not evidence. Their purpose is to help you understand the evidence and law.

14       3.       Questions to a witness: A question is not evidence. A question can only be  
15 used to give meaning to a witness' answer.

16       4.       Objections to questions: If a lawyer objects to a question and I do not allow the  
17 witness to answer, you must not try to guess what the answer might have been. You  
18 must also not try to guess the reason why the lawyer objected in the first place.

19       5.       Rejected evidence: At times during the trial, evidence may be offered which  
20 that I do not admit as evidence. When evidence is not admitted, you must not consider  
21 it for any purpose.

22       6.       Stricken evidence: At times I may order some evidence to be stricken from the  
23 record. Then it is no longer evidence and you must not consider it for any purpose.

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26       RAJI 6, 3rd Edition

**PROPOSED INSTRUCTION NO.**

## Rulings of the Court

Admission of evidence in court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admission of evidence.

If an objection to a question is sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit is offered into evidence and an objection to it is sustained, you must not consider that exhibit as evidence. If testimony is ordered stricken from the record, you must not consider that testimony for any purpose.

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility of the witnesses or the weight you should give to any evidence that has been admitted.

RAJI 7, 3rd Edition

**PROPOSED INSTRUCTION NO.** \_\_\_\_\_

## Exclusion of Witnesses

The Rule of Exclusion of Witnesses is in effect and will be observed by most witnesses until the trial is over and a result announced. This means that most witnesses will remain outside the courtroom during the entire trial except when one is called to the witness stand. They will wait in the areas directed by the bailiff unless other arrangements have been made with the attorney who has called them. The Court has determined that some witnesses are not subject to this rule and you should not concern yourself with who is and who is not excluded. This rule does not apply to the certain designated family members of the victim in this case, or to Mr. DeMocker's parents, all of whom are permitted to be present for any and all proceedings even though they may be called as witnesses. The rule also forbids witnesses from telling anyone but the lawyers what they will testify about or what they have testified to. If witnesses do talk to the lawyers about their testimony, other witnesses and jurors should avoid being present or overhearing.

The lawyers are directed to inform all their witnesses of these rules and to remind them of their obligations from time to time, as may be necessary. The parties and their lawyers should keep a careful lookout to prevent any potential witness from remaining in the courtroom if they accidentally enter.

RAJI 8, 3rd Edition, as amended

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Bench Conferences and Recesses**

3                   From time to time during the trial, it may become necessary for me to talk with  
4 the attorneys out of the hearing of the jury, either by having a conference at the bench  
5 when the jury is present in the courtroom, or by calling a recess. Please understand  
6 that while you are waiting, we are working. The purpose of these conferences is not to  
7 keep relevant information from you, but to decide how certain evidence is to be  
8 treated under the rules of evidence and to avoid confusion and error. We will, of  
9 course, do what we can to keep the number and length of these conferences to a  
10 minimum. I may not always grant an attorney's request for a conference. Do not  
11 consider my granting or denying a request for a conference as any indication of my  
12 opinion of the case or of what your verdict should be. Please do not be concerned with  
13 what we are discussing at any bench conference we may have. If you overhear what  
14 is taking place at a bench conference, please advise the Court immediately. Please  
15 respect the privacy of those participating in the bench conference in order to maintain  
16 the fairness of the trial.  
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RAJI 9, 3rd Edition, as amended

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Credibility of Witnesses**

3                   In deciding the facts of this case, you should consider what testimony to  
4 accept, and what to reject. You may accept everything a witness says, or part of it, or  
5 none of it.

6                   In evaluating testimony, you should use the tests for accuracy and truthfulness  
7 that people use in determining matters of importance in everyday life, including such  
8 factors as: the witness's ability to see or hear or know the things the witness testified  
9 to; the quality of the witness's memory; the witness's manner while testifying;  
10 whether the witness has any motive, bias, or prejudice; whether the witness is  
11 contradicted by anything the witness said or wrote before trial, or by other evidence;  
12 and the reasonableness of the witness's testimony when considered in the light of the  
13 other evidence.

14                   Consider all of the evidence in light of reason, common sense, and experience.

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RAJI 10, 3rd Edition

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Expert Witness**

3                   A witness qualified as an expert by education or experience may state opinions  
4 on matters in that witness's field of expertise, and may also state reasons for those  
5 opinions.

6                   Expert opinion testimony should be judged just as any other testimony. You  
7 are not bound by it. You may accept it or reject it, in whole or in part, and you should  
8 give it as much credibility and weight as you think it deserves, considering the  
9 witness's qualifications and experience, the reasons given for the opinions, and all the  
10 other evidence in the case.

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RAJI 11, 3rd Edition

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **No Transcript Available to Jury; Taking Notes**

3                   At the end of the trial you will have to make your decision based on what you  
4 recall of the evidence. You will not be given a written transcript of any testimony; you  
5 should pay close attention to the testimony as it is given.

6                   You have been provided with note pads and pens. The court encourages you to  
7 take notes during the trial if you wish to do so. Do not let note taking distract you so  
8 that you miss hearing or seeing other testimony. You may use your notes during your  
9 deliberations at the end of the trial. Until then, keep your notes to yourself. During  
10 recesses in the trial, you may leave your notes on your seat. Your notes are  
11 confidential and my bailiff will guard them. No one will be allowed to read your  
12 notes. Whether you take notes or not, you should rely upon your own memory of what  
13 was said. Your memory should not be influenced by the notes of other jurors. After  
14 you have rendered your verdict, the bailiff will collect your notes and destroy them.

15                   Do not be influenced at all by my taking notes at times. What I write down  
16 may have nothing to do with what you will be concerned with at this trial.

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RAJI 12, 3rd Edition, as amended

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1 me or any member of my staff [insert phone number] as soon as you can. To avoid  
2 even the appearance of improper conduct, do not talk to any of the parties, the  
3 lawyers, the witnesses or media representatives about anything until the case is over,  
4 even if your conversation with them has nothing to do with the case. For example,  
5 you might pass an attorney in the hall, and ask what good restaurants there are  
6 downtown, and somebody from a distance may think you are talking about the case.  
7 So, again, please avoid even the appearance of improper conduct.

8 The lawyers and parties have been given the same instruction about not  
9 speaking with you jurors, so do not think they are being unfriendly to you. When you  
10 go home tonight and family and friends ask what the case is about, remember you  
11 cannot speak with them about the case. All you can tell them is that you are on a jury,  
12 the estimated schedule for the trial, and that you cannot talk about the case until it is  
13 over.

14 In a civil case, the jurors are permitted to discuss the evidence during the trial  
15 while the trial progresses. In a criminal case such as this, however, the jurors are not  
16 permitted to discuss the evidence until all the evidence has been presented and the  
17 jurors have retired to deliberate on the verdict. You therefore may not discuss the  
18 evidence among yourselves until you retire to deliberate on your verdict.

19 Do not form final opinions about any fact or about the outcome of the case  
20 until you have heard and considered all of the evidence, the closing arguments, and  
21 the rest of the instructions I will give you on the law. Keep an open mind during the  
22 trial. Form your final opinions only after you have had an opportunity to discuss the  
23 case with each other in the jury room at the end of the trial.

24 Before each recess, I will not repeat the entire Admonition I have just given  
25 you. I will probably refer to it by saying, "Please remember the Admonition," or  
26 something like that. However, even if I forget to make any reference to it, remember  
that the Admonition still applies at all times during the trial.

RAJI 13, 3rd Edition, as amended

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Media Coverage**

3                   There may or may not be news media coverage of the trial. What the news  
4 media covers is up to them. If there is media coverage, you must avoid it during the  
5 trial. If you do encounter something about this case in the news media during the trial,  
6 end your exposure to it immediately and report to me as soon as you can. If there are  
7 cameras in the courtroom during the trial, do not be concerned about them. Court  
8 rules require that the proceedings be photographed or televised in such a way that no  
9 juror can be recognized.

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RAJI 14, 3rd Edition

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Questions by Jurors**

3                   If at any time during the trial you have difficulty hearing or seeing something  
4 that you should be hearing or seeing, or if you get into personal distress for any  
5 reason, raise your hand and let me know.

6                   If you have any questions about parking, restaurants, or other matters relating  
7 to jury service, feel free to ask one of the court staff. But remember that the  
8 Admonition applies to court staff, as it does to everyone else, so do not try to discuss  
9 the case with court staff.

10                  If you have a question about the case for a witness or for me, write it down, but  
11 do not sign it. Hand the question to the bailiff. If your question is for a witness who is  
12 about to leave the witness stand, please signal the bailiff or me before the witness  
13 leaves the stand.

14                  The lawyers and I will discuss the question. The rules of evidence or other  
15 rules of law may prevent some questions from being asked. If the rules permit the  
16 question and the answer is available, an answer will be given at the earliest  
17 opportunity. When we do not ask a question, it is no reflection on the person  
18 submitting it. You should attach no significance to the failure to ask a question. I will  
19 apply the same legal standards to your questions as I do to the questions asked by the  
20 lawyers. If a particular question is not asked, please do not guess why or what the  
21 answer might have been.

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26                  RAJI 15, 3rd Edition

**PROPOSED INSTRUCTION NO. \_\_\_\_\_**

**Alternate Jurors**

The law provides for a jury of 12 persons in a case such as this. We have more than 12 jurors so that, if a juror becomes ill or has a personal emergency, the trial can continue without that juror.

At the end of the case, alternate jurors will be determined by lot in a drawing held in open court. Please do not be concerned with who may or may not be chosen as an alternate at the end of the case.

RAJI 16, 3rd Edition

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**PROPOSED INSTRUCTION NO. \_\_\_\_\_**

**Constitutional Right Not To Testify**

A defendant in a criminal case has a constitutional right to not testify at trial, and the exercise of that right cannot be considered by the jury in determining whether a defendant is guilty or not guilty.

RAJI 17, 3rd Edition

**PROPOSED INSTRUCTION NO.** \_\_\_\_\_

## Statements of Defendant

If there is testimony in this case about what a defendant said to a law enforcement officer, you must not consider any such statements unless you determine beyond a reasonable doubt that the defendant made the statements voluntarily.

A defendant's statement to a law enforcement officer was not voluntary if it resulted from the defendant's will being overcome by a law enforcement officer's use of any sort of violence, coercion, or threats or by any direct or implied promise, however slight. You must give such weight to the defendant's statement as you feel it deserves under all the circumstances.

RAJI 18, 3rd Edition

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Presumption of Innocence and Burden of Proof**

3                   The State has charged the defendant with a crime. The charge is not evidence  
4 against the defendant. You must not think the defendant is guilty just because the  
5 defendant has been charged with a crime. The defendant has pled "not guilty". The  
6 State must prove every part of the charge beyond a reasonable doubt.

7                   The law does not require a defendant to prove innocence. Every defendant is  
8 presumed by law to be innocent.

9                   The State has the burden of proving the defendant guilty beyond a reasonable  
10 doubt.

11                  Proof beyond a reasonable doubt is proof that leaves you firmly convinced of  
12 the defendant's guilt. It is not required that the governments prove guilt beyond all  
13 possible doubt. A reasonable doubt is a doubt based upon reason and common sense  
14 and is not based purely on speculation. It may arise from a careful and impartial  
15 consideration of all the evidence, or from lack of evidence. If after a careful and  
16 impartial consideration of all the evidence, you are not convinced beyond a  
17 reasonable doubt that the defendant is guilty, it is your duty to find the defendant not  
18 guilty. On the other hand, if after a careful and impartial consideration of all the  
19 evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it  
20 is your duty to find the defendant guilty.

21                  In deciding whether the defendant is guilty or not guilty, do not consider the  
22 possible punishment.

23                  RAJI 19, 3rd Edition, as amended

24                  3.5 of the Ninth Circuit Criminal Jury Instructions, as amended

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **The Charged Offense**

3           To assist you in considering the evidence that will be presented during the trial,  
4 I will now tell you about the crimes with which the defendant is charged. The  
5 defendant is charged with first degree burglary and first degree murder which crimes  
6 require proof of the following:

7           The crime of burglary in the first degree requires proof of the following:

- 8           1.     The defendant entered or remained unlawfully in or on a residential  
9                 structure; and  
10           2.     The defendant intended to commit any theft or felony therein: and  
11           3.     At some time between the moment of entry through flight from the  
12                 scene, the defendant knowingly possessed a deadly weapon or a  
13                 dangerous instrument: to wit, a golf club.

14           The crime of first degree murder requires proof that the defendant:

- 15           1.     caused the death of another person; and  
16           2.     intended or knew that he [she] would cause the death of another person;  
17                 and  
18           3.     acted with premeditation.

19           "Premeditation" means that the defendant intended to kill another human being  
20           or knew he would kill another human being, and that after forming that intent or  
21           knowledge, reflected on the decision before killing. It is this reflection, regardless of  
22           the length of time in which it occurs, that distinguishes first degree murder from  
23           second degree murder. An act is not done with premeditation if it is the instant effect  
24           of a sudden quarrel or heat of passion.

25           The defendant has pled "not guilty" to these charges. The State must prove  
26           each element of the charged crimes beyond a reasonable doubt. I will give you more  
27           details and definitions about the alleged crime in the final jury instructions.

28           RAJI 21, 3rd Edition

29           RAJI 15.08, 3rd Edition, as amended

30           RAJI 11.05, 3rd Edition

1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Scheduling During Trial**

3                   The trial is expected to last through July. We will all do our best to move the  
4 case along, but delays frequently occur. These won't be anyone's fault, so don't hold  
5 them against the parties. Delays usually occur because the attorneys and I often need  
6 to resolve certain legal matters before these matters may be presented to you in court  
or because I am busy with matters in other cases.

7                   The usual hours of trial will be from 9:00 a.m. to 5:00 p.m.. We will take short  
8 recesses about every mid-morning and mid-afternoon and occasionally stretch breaks  
9 in place. We will recess at 12:00 and begin again at 1:30 p.m.. Unless a different  
10 starting time is announced prior to recessing for the evening, you may assume a  
starting time of 9:00 a.m. for the next day. At the beginning of the day, please  
assemble in the jury room for this division. Please do not come back into the  
courtroom until you are called by the bailiff.

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12                   RAJI 22, 3rd Edition  
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1                                   **PROPOSED INSTRUCTION NO. \_\_\_\_\_**

2                                   **Order of Trial**

3                                   **Criminal trials generally proceed in the following order:**

4                                   First, the prosecuting attorney will make an opening statement giving a  
5                                   preview of the case. The defendant's attorney may make an opening statement  
6                                   outlining the defense case immediately after the prosecutor's statement, or it may be  
7                                   postponed until after the State's case has been presented. What is said in opening  
8                                   statements is not evidence. Nor is it an argument. The purpose of an opening  
9                                   statement is to help you prepare for anticipated evidence.

10                                  Second, the State will present its evidence. After the State finishes the  
11                                  presentation of its evidence, the defendant may present evidence but is never required  
12                                  to do so. If the defendant does produce evidence, the State may present additional, or  
13                                  rebuttal, evidence. With each witness, there is a direct examination, a cross-  
14                                  examination by the opposing side, and, finally, redirect examination. This usually  
15                                  ends the testimony of that witness.

16                                  Third, after all the evidence is in, I will read and give you copies of the final  
17                                  instructions, the rules of law you must follow in reaching your verdict.

18                                  [Fourth, the attorneys will make closing arguments to tell you what they think  
19                                  the evidence shows and how they think you should decide the case. The State has the  
20                                  right to open and close the argument since the State has the burden of proof. Just as in  
21                                  opening statements, what is said in closing arguments is not evidence.]

22                                  Fifth, you will deliberate in the jury room about the evidence and rules of law  
23                                  in an effort to reach the verdicts. If you unanimously agree upon the verdicts, it] [they  
24                                  will be read in court with you and the parties present.

25                                  Finally, you will be discharged and released from the Admonition.

26                                  The rules of law I have shared with you in the past few minutes are preliminary  
only. At the end of the case I will read to you and give you a copy of the final  
instructions of law. In deciding the case you must be guided by the final instructions.

RAJI 23, 3rd Edition, as amended